



## **ARKANSAS REAL ESTATE COMMISSION**

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# **REAL ESTATE LICENSE LAW TIME-SHARE LAW**

**January 2012**

**ARKANSAS CODE ANNOTATED  
§17-42-101, ET SEQ.  
§18-14-101, ET SEQ.**

**\*\*\* CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES \*\*\***

**\*\*\* FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH \*\*\***

**\*\*\* JUNE 2, 2011 \*\*\***

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## **TITLE 17**

### **CHAPTER 42**

#### **REAL ESTATE LICENSE LAW**

##### **SUBCHAPTER.**

1. REAL ESTATE LICENSE LAW - GENERAL PROVISIONS.
  2. ARKANSAS REAL ESTATE COMMISSION.
  3. LICENSES.
  4. APPLICABILITY - REAL ESTATE RECOVERY FUND - DISCIPLINARY ACTIONS.
  5. RENEWAL OF LICENSES.
  6. INTEREST ON TRUST ACCOUNTS PROGRAM.
  7. INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIP
- 

#### **SUBCHAPTER 1 - REAL ESTATE LICENSE LAW - GENERAL PROVISIONS**

##### **SECTION.**

- 17-42-101. Title.
  - 17-42-102. Legislative findings and intent.
  - 17-42-103. Definitions.
  - 17-42-104. Exemptions.
  - 17-42-105. Criminal sanctions.
  - 17-42-106. Injunction.
  - 17-42-107. Capacity to sue and be sued.
  - 17-42-108. Disclosure requirement.
  - 17-42-109. Civil penalties for engaging in unlicensed real estate activity.
  - 17-42-110. Broker's price opinions.
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##### **17-42-101. Title.**

This chapter shall be known as the "Real Estate License Law".

##### **17-42-102. Legislative findings and intent.**

The legislature finds that it is necessary to regulate the practice of real estate brokers and salespersons in order to protect the public health, safety, and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

##### **17-42-103. Definitions.**

As used in this chapter:

(1) (A) "Associate broker" means an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who

participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker.

(B) An associate broker shall have no supervisory authority over any other licensee;

(2) "Branch office" means a real estate principal broker's office other than his or her principal place of business;

(3) "Classroom hour" means a period of at least fifty (50) minutes, but not more than sixty (60) minutes, of actual classroom instruction with the instructor present;

(4) "Continuing education" means post licensure education derived from participation in courses in real estate-related subjects that have been approved by the State Board of Private Career Education or that are not required to be approved by the board;

(5) "Continuing education unit" means a period of ten (10) contact hours of actual classroom instruction with the instructor present;

(6) (A) "Executive broker" means an individual who:

(i) Has a broker's license;

(ii) Is employed by a principal broker or associated with a principal broker as an independent contractor; and

(iii) Participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker.

(B) An executive broker may supervise associate brokers and salespersons;

(7) (A) "Licensee" means an individual who holds any type of license issued by the Arkansas Real Estate Commission

(B) "Licensee" includes a principal broker, an executive broker, an associate broker, and a salesperson.

(C) This chapter does not preclude a licensee from:

(i) Doing business as a professional corporation under § 4-29-101 et seq.; or

(ii) Receiving payment from a real estate firm or principal broker of an earned commission to the licensee's legal business entity if the licensee earned the commission on behalf of the real estate firm or principal broker;

(8) "Participate in a real estate auction" means to do any act or conduct for compensation or the expectation of compensation and designed, intended, or expected to affect the bidding or results of a real estate auction, including without limitation serving as an auctioneer or ringman or encouraging, soliciting, or receiving bids;

(9) "Principal broker" means an individual expecting to act or acting for another for a fee, commission, or other consideration who:

(A) Sells, exchanges, purchases, rents, or leases real estate;

(B) Offers to sell, exchange, purchase, rent, or lease real estate;

(C) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rent, or lease of real estate;

(D) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(E) Auctions, offers, attempts, or agrees to auction real estate, or participates in a real estate auction;

(F) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements to real estate;

(G) Collects, offers, attempts, or agrees to collect rent for the use of real estate;

(H) Advertises or holds himself or herself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(I) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease, or rent of real estate;

(J) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease, or rent of real estate;

(K) Engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such a purpose or for referral of information concerning the real estate to brokers, or both; or

(L) Performs any of the acts described in this subdivision (9) as an employee of or on behalf of the owner of, or any person who has an interest in, real estate;

(10)(A) "Real estate" means an interest in real property.

(B) "Real estate" includes without limitation a leasehold, time-share interval, or an interest in real property that is purchased or sold in connection with the purchase or sale of all or part of the assets, stock, or other ownership interest of a business or other organization;

(11) "Salesperson" means an individual who:

(A) Has a salesperson's license;

(B) Is employed by a principal broker or is associated with a principal broker as an independent contractor; and

(C) Participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker;

(12) "Unlicensed real estate activity" means offering or engaging in any practice, act, or operation set forth in subdivision (9) of this section without a valid active Arkansas license issued by the commission; and

(13) "Broker's price opinion" means an estimate prepared by a licensee that details the probable selling price of real estate and provides a varying level of detail about the real estate's condition, market, and neighborhood, and information about sales of comparable real estate.

#### **17-42-104. Exemptions.**

(a) This chapter does not apply to:

(1) A person not licensed under this chapter who performs any of the acts described in § 17-42-103(9) with regard to the property owned, leased, or purchased by him or her;

(2) An attorney in fact under a duly executed and recorded power of attorney from the owner or lessor authorizing the final consummation by performance of any contract for the sale, lease, or exchange of real estate, provided that the attorney in fact does not receive or have an expectation of receiving a fee, commission, or other consideration, directly or indirectly, for performing the act;

(3) An attorney at law in the performance of his or her duties as an attorney at law;

(4) A person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;

(5) A person acting as a resident manager when the resident manager resides on the premises and is engaged in the leasing of real property in connection with his or her employment;

(6) A person employed only at a salaried or hourly rate to engage in the leasing of real property for or on behalf of a licensed principal broker, the real estate firm of a licensed principal broker, or an owner of real estate, if the person performs one (1) or more of the following activities:

(A) Delivering a lease application, lease, or an amendment to a lease application or lease to any person;

(B) Receiving a lease application, lease, or an amendment to a lease application for delivery to the principal broker, real estate firm, or owner;

(C) Receiving a security deposit, rental payment, or any related payment for delivery to and made payable to the principal broker, real estate firm, or owner;

(D) Acting under the direct written instructions of the principal broker, real estate firm, or owner:

(i) Showing a rental unit to any person; or

(ii) Assisting in the execution of a preprinted lease or rental agreement containing terms established by the principal broker, real estate firm, or owner; or

(E) Conveying information prepared by the principal broker, real estate firm, or owner about a lease application, lease, the status of a security deposit, or the payment of rent to or from any person;

(7) An officer or employee of a federal agency or state government, or any political subdivision, in the performance or conduct of his or her official duties;

(8) A multiple listing service wholly owned by a nonprofit organization or association of real estate licensees;

(9) An officer of a corporation, a member or manager of a limited liability company, a partner of a partnership, or the equivalent of an officer of another form of business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the acts are not performed by the officer, member, or partner for or in expectation of a commission or other compensation resulting solely from a successful transaction, not including profits and distributions of the entity; or

(10) A person employed primarily at a salaried or hourly rate by a corporation, limited liability company, partnership, or other business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the:

(A) Acts are not performed by the employee for or in expectation of a commission or other compensation resulting solely from a successful transaction;

(B) Primary business activity of both the entity and affiliated entity is not ownership or acquisition of real estate; and

(C) Employee is not providing real estate services to or on behalf of more than one (1) entity not affiliated by common ownership.

(b) Any real estate broker licensed by the Arkansas Real Estate Commission on or before January 1, 1985, who is engaged in the sale of real estate by auction only is authorized to employ real estate salespersons to work under the license of the broker even though the broker is employed in a non-real estate-related field and is only a part-time broker.

#### **17-42-105. Violations and criminal sanctions.**

(a) It is unlawful to:

(1) Engage in unlicensed real estate activity; or

(2) Violate this chapter:

(A) Individually; or

(B) As an officer, agent, or member of a firm, corporation, partnership, copartnership, association, limited liability company, or other entity by participating in or being an accessory to a violation of this chapter by the firm, corporation, partnership, copartnership, association, limited liability company, or other entity.

(b) A commissioner of the Arkansas Real Estate Commission, the Executive Director of the Arkansas Real Estate Commission, a commissioner's designee, the Executive Director's designee, or any licensee residing in the county where the violation occurs may by affidavit institute criminal proceedings for a violation of this chapter without filing a bond for costs.

(c) The prosecuting attorney for each county shall prosecute any violation of this chapter that occurs in his or her county.

(d) A violation of this chapter is a Class D felony.

#### **17-42-106. Injunction.**

(a) If the Arkansas Real Estate Commission has reason to believe that a person has violated a provision of this chapter, the commission or its designee may bring an action in the circuit court of any county in which the person resides or does business to enjoin the person from continuing, engaging in, or doing any act or acts in furtherance of the violation.

(b) In any action under this section, the circuit court of any county in which the person resides or does business may enter a preliminary injunction, a final injunction, or an order for any other appropriate relief.

#### **17-42-107. Capacity to sue and be sued.**

(a) An action or suit shall not be instituted, nor recovery be had, in any court of this state by any person or other legal entity for compensation for performance of any acts described in § 17-42-103(9) unless at the time of offering to perform and performing any such act or procuring any promise to contract for the payment of compensation for any such contemplated act:

(1) The person holds an active license under this chapter as a principal broker; or

(2) The person or other legal entity was the owner of the real estate firm that contracted for or otherwise performed the acts for the compensation that is the subject of the action or suit through either a principal broker or a person approved by the Arkansas Real Estate Commission under § 17-42-301(f) while licensed or approved by the commission at the time of the acts.

(b) No salesperson, executive broker, or associate broker may sue in his or her own capacity for the recovery of fees, commissions, or compensation for services as a salesperson, executive broker, or associate broker unless the action is against the principal broker with whom he or she is licensed or was licensed at the time the acts were performed.

(c) (1) As used in this subsection, "systematic residential rental property inspection program" means a program that requires all persons who reside outside of the State of Arkansas and are owners of residential rental property located within the corporate limits of a municipality in this state to designate an agent for service of process.

(2) In any municipality that has established a systematic residential rental property inspection program, a licensee as defined under § 17-42-103 shall not have criminal or civil liability to the municipality, to the nonresident owner, or otherwise for any action or inaction of the municipality or owner:

(A) When acting as an agent for service of process for a nonresident owner;

(B) Arising from the agent's performance of duties as the agent for service of process; and

(C) If within three (3) business days of receipt of service of process or at other times established by ordinance in effect as of August 12, 2005, the licensee sends the service of process to the last known address of the nonresident owner.

(3) This subsection supersedes any provision of common law to the contrary.

#### **17-42-108. Disclosure requirement.**

(a) (1) In every real estate transaction involving a licensee, the licensee shall clearly disclose to all parties or to their agents which party or parties he or she is representing.

(2) A licensee may represent more than one (1) party to a real estate transaction pursuant to and subject to regulations and rules of the Arkansas Real Estate Commission.

(b) The timing, method, and other requirements of such a disclosure shall be established by the commission, and the commission shall also determine the consequences of failure to make disclosure in accordance with such requirements.

#### **17-42-109. Civil penalties for engaging in unlicensed real estate activity.**

(a) If after notice and a hearing in accordance with this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Real Estate Commission finds that a person has engaged in unlicensed real estate activity, the commission may impose a civil penalty of no more than five thousand dollars (\$5,000) and assess costs against the person.

(b) The fact that a person offers to engage in or offers to perform any practice, act, or operation set forth in § 17-42-103(9) without a license is prima facie evidence that the person is engaged in unlicensed real estate activity.

(c) In addition to civil penalties imposed under this section, the commission may require the person engaged in unlicensed real estate activity to reimburse any compensation, fees, or other remuneration collected during the unlicensed real estate activity.

#### **17-42-110. Broker's price opinions.**

(a) A licensee may prepare, provide, and collect a fee for issuing a broker's price opinion for:

(1) An existing or potential seller for the purposes of listing and selling real estate;

(2) An existing or potential buyer of real estate;

(3) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or

(4) (A) An existing or potential lienholder.

(B) However, a broker's price opinion prepared for an existing or potential lienholder in conjunction with the purchase of a buyer's principal residence shall not be used as the primary basis to determine the value of the buyer's principal residence for the purpose of a loan origination of a residential mortgage loan secured by the buyer's principal residence.

(b) The Arkansas Real Estate Commission may prescribe rules for the preparation and issuance of a broker's price opinion.

(c) Licensees shall have the authority to prepare and provide broker price opinions pursuant to this section, notwithstanding the provisions of § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(d) A broker's price opinion or market analysis issued by a real estate licensee shall not contain the terms "market value", "appraised value", or "appraisal".

## **SUBCHAPTER 2 - ARKANSAS REAL ESTATE COMMISSION**

### **SECTION**

17-42-201. Creation - Members.

17-42-202. Organization - Employees.

17-42-203. Powers and duties.

17-42-204. Disposition of funds - Fund created.

17-42-205. Subpoenas and subpoenas duces tecum.

#### **17-42-201. Creation - Members.**

(a) (1) The Arkansas Real Estate Commission shall consist of five (5) members, appointed by the Governor for terms of three (3) years, whose terms shall begin on January 1 and end on December 31 of the third year or when their respective successors are appointed and qualified.

(2) (A) Three (3) members shall have been licensed real estate brokers or licensed real estate salespersons for not fewer than five (5) years prior to their nominations.

(B) The Governor shall appoint members to fill vacancies from a list of four (4) nominees submitted by the Arkansas Realtors Association.

(3) (A) Two (2) members shall not be actively engaged in or retired from the business of real estate.

(B) One (1) shall represent consumers, and one (1) shall be sixty (60) years of age or older and shall represent the elderly.

(C) Both shall be appointed from the state at large, subject to confirmation by the Senate, but shall not be required to be appointed from a list submitted by the Arkansas Realtors Association.

(D) The two (2) positions may not be held by the same person.

(E) Both shall be full voting members but shall not participate in the grading of examinations.

(b) Each commissioner may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

#### **17-42-202. Organization - Employees.**

(a) (1) Immediately upon the qualification of the member appointed in each year, the Arkansas Real Estate Commission shall meet and organize by selecting from its members a chair and vice chair.

(2) A simple majority shall constitute a quorum.

(3) The commission shall meet as often as necessary or desirable in order to conduct its business.

(b) (1) The commission shall employ an executive director and such staff as may be necessary to carry out the provisions of this chapter and to put into effect the rules and regulations the commission may promulgate.

(2) The executive director shall have such duties, authority, and responsibility as the commission may designate, or as necessarily implied herein.

(3) The commission shall fix the salaries of employees.

#### **17-42-203. Powers and duties.**

(a) The Arkansas Real Estate Commission may do all things necessary and convenient for carrying into effect the provisions of this chapter and may from time to time promulgate necessary or desirable rules and regulations.

(b) The commission shall have power to administer oaths.

(c) The commission shall adopt a seal with such design as it may prescribe engraved thereon.

(d) Copies of all records and papers in the office of the commission, certified and authenticated by the commission, shall be received in evidence in all courts equally and with like effect as the originals.

(e) The commission:

(1) Shall maintain in writing or in electronic format a list of the names and addresses of all active licensees licensed by it under the provisions of this chapter; and

(2) May publish in writing or in electronic format the names of all persons who have been sanctioned under § 17-42-312 or by consent order, together with other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public.

(f) The commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the reasonable and necessary expenses in connection therewith. The institutes or seminars shall be open to all licensees.

(g) The commission is authorized to make reasonable charges for materials provided by the commission and for services performed in connection with providing materials.

(h) (1) The commission is authorized to establish reasonable procedures that shall be used by real estate licensees in conducting real estate auctions.

(2) For the protection of the public, real estate licensees who manage and conduct real estate auctions also shall be required to be licensed by the Auctioneer's Licensing Board.

(3) Notwithstanding subdivision (h)(2) of this section, the commission shall have sole jurisdiction over real estate licensees and their actions when managing or conducting real estate auctions.

#### **17-42-204. Disposition of funds -- Fund created.**

(a) Except as otherwise provided herein, all fees, charges, fines, and penalties collected by the Arkansas Real Estate Commission shall be deposited into a fund to be known as the "Arkansas Real Estate Commission Fund".

(b) The commission is empowered to expend funds appropriated from the Arkansas Real Estate Commission Fund for the requirements, purposes, and expenses of the commission under the provisions of this chapter.

#### **17-42-205. Subpoenas and subpoenas duces tecum.**

(a) The Arkansas Real Estate Commission shall have the power to issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum may require any book, writing, document, or other paper or thing which is germane to an investigation or hearing conducted by the commission to be transmitted to the commission.

(c) (1) Service of a subpoena shall be as provided by law for the service of subpoenas in civil cases in the circuit courts of this state, and the fees and mileage of officers serving the subpoenas and of witnesses appearing in answer to the subpoenas shall be the same as provided by law for proceedings in civil cases in the circuit courts of this state.

(2) (A) The commission shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the commission.

(B) The fees and mileage of the officers serving the subpoena and of the witness shall be paid by the party at whose request a witness is subpoenaed.

(d) (1) In the event a person shall have been served with a subpoena or subpoena duces tecum as herein provided and fails to comply therewith, the commission may apply to the circuit court of the county in which the commission is conducting its investigation or hearing for an order causing the arrest of the person and directing that the person be brought before the court.

(2) The court shall have the power to punish the disobedient person for contempt as provided by law in the trial of civil cases in the circuit courts of this state.

### **SUBCHAPTER 3 – LICENSES**

#### **SECTION**

- 17-42-301. License required - Violations.
- 17-42-302. Issuance or denial of license.
- 17-42-303. Education and experience requirements.
- 17-42-304. Fees.
- 17-42-305. Nonresident license requirements.
- 17-42-306. Application procedure.
- 17-42-307. Expiration and renewal.
- 17-42-308. Inactive license.
- 17-42-309. Place of business.
- 17-42-310. Change of name or address - Lost license or card.
- 17-42-311. Violations.
- 17-42-312. Investigation of complaint - Penalties.
- 17-42-313. Dismissal of complaint - Appeal.
- 17-42-314. Hearings.
- 17-42-315. Criminal background check
- 17-42-316. Agency relationship and duties generally.
- 17-42-317. Representing seller or lessor in an agency relationship.
- 17-42-318. Representing buyer or lessor in an agency relationship.
- 17-42-319. Waiver of Agency Duties

### **17-42-301. License required - Violations.**

(a) No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this chapter.

(b) Any person who directly or indirectly for another with the intention, or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in § 17-42-103(9), whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this chapter.

(c) The commission of a single act by a person required to be licensed under this chapter and not so licensed shall constitute a violation of this chapter.

(d) It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this chapter.

(e) (1) Notwithstanding the provisions of this section, a person or other legal entity not licensed by the Arkansas Real Estate Commission may own a real estate firm, provided the employees or agents employed by or associated with the firm who perform real estate activities identified under § 17-42-103(9) hold an active license under this chapter.

(2) The firm may enter into contracts or otherwise perform activities identified under § 17-42-103(9) only through a principal broker and a licensee employed by or associated with the principal broker that holds an active license issued by the commission at the time of performing the contract or activities.

(f) The commission may provide for the continuing temporary operation of a real estate firm having all rights under § 17-42-107(a) upon the death, resignation, termination, or incapacity of the principal broker or upon the closing of a real estate firm, under the direction of a person approved by the commission, subject to time limitations and other conditions imposed by the commission.

### **17-42-302. Issuance or denial of license.**

(a) The Arkansas Real Estate Commission shall issue a license to any applicant who meets the following requirements:

- (1) Attainment of the age of majority;
- (2) Successful completion of educational requirements prescribed by this chapter;
- (3) Successful completion of experience requirements prescribed by this chapter;
- (4) Successful completion of an examination administered or approved by the commission;
- (5) Demonstrates no record of unprofessional conduct;
- (6) Evidence of good reputation for honesty, trustworthiness, and integrity sufficient to safeguard the interests of the public; and
- (7) Completion of a criminal history background check through the Department of Arkansas State Police and the Federal Bureau of Investigation as set out in § 17-42-315.

(b) The commission shall determine what constitutes adequate proof of meeting the requirements of subsection (a) of this section and shall deny a license to any applicant who fails to meet the requirements or who fails to pay the appropriate fees.

### **17-42-303. Education and experience requirements.**

(a) The Arkansas Real Estate Commission shall establish educational requirements for licensure, including the standards and procedures for approval of educational programs, subject to the following conditions:

(1) The maximum number of educational hours to be required of an applicant for a broker's license shall not exceed one hundred twenty (120) hours within the thirty-six (36) months immediately preceding the date of application; and

(2) The maximum number of hours required of an applicant for a salesperson's license shall not exceed ninety (90) hours, at least thirty (30) hours of which shall be in the basic principles of real estate.

(b) (1) The commission shall establish the experience requirement for licensure for an applicant for a broker's license subject to the condition of serving an active, bona fide apprenticeship by holding a valid real estate salesperson's license issued by the commission or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(2) However, the commission may waive the experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(c) (1) The commission shall establish a post-licensure education requirement for individuals in their first year of licensure as salespersons or brokers.

(2) The commission shall not require more than thirty (30) classroom hours of post-licensure education hours.

#### **17-42-304. Fees.**

The Arkansas Real Estate Commission shall have authority to establish, charge, and collect the following fees:

- (1) An application fee not to exceed fifty dollars (\$50.00);
- (2) An original broker's license fee not to exceed eighty dollars (\$80.00);
- (3) A broker's license annual renewal fee not to exceed eighty dollars (\$80.00);
- (4) An original salesperson's license fee not to exceed sixty dollars (\$60.00);
- (5) A salesperson's license annual renewal fee not to exceed sixty dollars (\$60.00);
- (6) A broker's expired license fee not to exceed one hundred ten dollars (\$110) per year or fraction thereof;

(7) A salesperson's expired license fee not to exceed eighty dollars (\$80.00) per year or fraction thereof;

(8) A license reissuance fee not to exceed thirty dollars (\$30.00);

(9) An initial duplicate license fee not to exceed thirty dollars (\$30.00);

(10) A duplicate license annual renewal fee not to exceed thirty dollars (\$30.00);

(11) A transfer fee not to exceed thirty dollars (\$30.00);

(12)(A) An examination fee not to exceed seventy-five dollars (\$75.00).

(B) However, the commission at its discretion may direct each applicant to pay the actual costs of the examination fee directly to a testing service engaged by the commission to administer the examination;

(13) Pursuant to § 17-42-313, an appeal filing fee not to exceed one hundred dollars (\$100);

(14) A Real Estate Recovery Fund fee not to exceed twenty-five dollars (\$25.00); and

(15) The actual cost of a state and federal criminal history background check.

#### **17-42-305. Nonresident license requirements.**

(a) In order to be licensed in Arkansas a nonresident must:

(1) Either:

(A) Meet the requirements of § 17-42-302; or

(B) Show satisfactory proof of current active licensure in the applicant's resident jurisdiction, which must be a jurisdiction that offers Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by this chapter;

- (2) Pay any required fees;
- (3) Sign a statement that the applicant has read the Real Estate License Law, § 17-42-101 et seq., and regulations and agrees to abide by its provisions in all real estate activity;
- (4) (A) Affiliate with a resident or nonresident principal broker licensed by the Arkansas Real Estate Commission, if a salesperson or associate broker.
  - (B) If a nonresident licensee terminates the affiliation with a principal broker licensed by the commission, the license of the nonresident shall automatically be terminated until the nonresident places the license on inactive status or affiliates with another broker licensed by the commission;
- (5) (A) Cause the licensing body of the applicant's resident jurisdiction to furnish to the commission a certification of licensure and copies of the records of any disciplinary actions taken against the applicant's license in that or other jurisdictions.
  - (B) Disciplinary action by any other lawful licensing authority may be grounds for denial of a license to a nonresident or for suspension or revocation of a license issued to a nonresident or for other appropriate disciplinary action authorized by this chapter;
- (6) (A) File with the Executive Director of the Arkansas Real Estate Commission a designation in writing that appoints the executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to the licensee may be served.
  - (B) Service upon the executive director shall be equivalent to personal service upon the licensee.
  - (C) Copies of the appointment certified by the executive director shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the originals thereof might be admitted.
  - (D) In such a written designation, the licensee shall agree that any lawful process against the licensee which is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this jurisdiction.
  - (E) The executive director shall mail a copy of any such process or notice by certified mail to the last known business address of the licensee; and
- (7) (A) Agree in writing to cooperate with any investigation initiated by the commission by promptly supplying any documents the commission may request and by personally appearing at the commission's offices or such other location in this state as the commission may request.
  - (B) If notice is sent by certified mail to the last known business address of a nonresident licensee directing the licensee to produce documents or to appear for an interview and the licensee fails to comply with that request, the commission may impose on the nonresident licensee any disciplinary sanction permitted by this chapter.
  - (b) The commission in its discretion may enter into written agreements with similar licensing authorities of other jurisdictions as may be necessitated by the laws of those jurisdictions to assure for Arkansas licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this chapter.
  - (c) The commission may deny licensure under subdivision (a)(1)(B) of this section to an applicant whose resident licensure is in a jurisdiction which the commission deems not to have educational or experience requirements at least equal to those of Arkansas.

**17-42-306. Application procedure -- Licensing examination required.**

- (a) (1) Applications for licensure must be submitted on forms provided by the Arkansas Real Estate Commission.
- (2) The commission may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter.
- (3) Each applicant shall pay such application fee and examination fee as the commission may require pursuant to § 17-42-304.

(4) (A) Applicants that have provided all required information and documentation to the commission may sit for the examination, provided that a request has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check.

(B) Upon the successful completion of the license exam, no license shall be issued until the commission receives and approves the state and federal criminal background check.

(b) (1) (A) An applicant who successfully completes the examination shall pay, within ninety (90) days from the date of the examination, such license fee and Real Estate Recovery Fund fee as the commission may require pursuant to § 17-42-304.

(B) (i) If the federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the federal criminal background check.

(ii) No real estate license shall be issued until receipt and approval by the commission of the state and federal criminal background check.

(2) The applicant's failure to pay the license fee and Real Estate Recovery Fund fee within that ninety-day period shall invalidate the examination results, and the applicant shall be required to make new application and retake the examination as an original applicant.

#### **17-42-307. Expiration and renewal.**

(a) Every license, both active and inactive, shall expire on a date established by the Arkansas Real Estate Commission.

(b) (1) For each active licensee, the commission shall issue a new license for each ensuing renewal period in the absence of any reason or condition that might warrant the refusal of a license, upon receipt of a written request no later than ninety (90) days prior to the expiration of the license upon forms provided by the commission together with the renewal fee.

(2) (A) For any broker or salesperson who does not wish to engage in the real estate business, the license shall be renewed on inactive status, in the absence of any reason or condition that might warrant the refusal of a license, upon receipt of the written request of the applicant no later than ninety (90) days prior to the expiration of the license upon forms provided by the commission together with the renewal fee.

(B) However, the commission may limit the number of renewal periods in which a license may be renewed on inactive status.

(C) The renewal fee for inactive status shall be the same as for renewal of an active license.

(3) An application for renewal filed after the date established by the commission to renew a license shall be treated as an application to renew an expired license.

(c) If any person to whom a valid license has been issued permits the license to expire for a period not in excess of that established by the commission, the commission shall issue to the person a current license without requiring the person to submit to any examination if the person furnishes such information as the commission requires, including proof of completion of appropriate continuing education requirements, and pays such fee as the commission requires.

(d) (1) New salesperson and broker licensees shall complete post-licensure education in accordance with § 17-42-303(c).

(2) If the licensee fails to complete the post-licensure education requirements within twelve (12) months after the date the license was issued, the commission shall place the license on inactive status until the commission receives documentation that the licensee has completed the post-licensure education requirements.

**17-42-308. Inactive license.**

- (a) (1) A licensee may place his or her license on inactive status.
- (2) The holder of an inactive license shall not practice as a real estate broker or salesperson in this state without first activating the license.
- (b) An inactive license which is not renewed shall be treated as an expired license pursuant to § 17-42-307.
- (c) Inactive licenses may be activated upon compliance with requirements established by the Arkansas Real Estate Commission, including payment of appropriate fees.
- (d) The provisions of this chapter relating to disciplinary action against a licensee shall be applicable to an inactive or expired license.

**17-42-309. Place of business.**

- (a) Every principal broker shall maintain a place of business and shall display a permanently attached sign bearing the name under which the broker conducts his or her real estate business and the words "real estate", "realty", or other words approved by the Arkansas Real Estate Commission which clearly indicate to the public that the broker is engaged in the real estate business.
- (b) (1) If a principal broker maintains a branch office, a duplicate license shall be issued upon payment by the principal broker of the initial fee and, thereafter, such renewal fee as the commission may require pursuant to § 17-42-304.
- (2) However, a duplicate license shall not be issued for a branch office at which licensees are assigned unless the principal broker establishing the branch office has designated an executive broker to supervise the licensees.

**17-42-310. Change of name or address -- Lost license or card.**

- (a) (1) When a licensee changes his or her name, place of business, or address shown on the license, or loses a license or pocket card, he or she shall promptly notify the Arkansas Real Estate Commission of such a change or loss.
- (2) Upon receipt of the notice and payment of the relevant fee, the commission shall reissue the license.
- (b) It is the responsibility of each licensee to keep the commission notified of his or her mailing address, both home and business, at all times.
- (c) The licenses of the principal broker and all licensees employed by or associated with him or her shall be retained by the principal broker and conspicuously displayed in his or her place of business.
- (d) (1) Upon the termination of a licensee's employment by or association with a principal broker, the licensee shall promptly deliver his or her pocket card to the principal broker, and the principal broker shall promptly notify the commission of the termination and return to the commission the license and pocket card of the terminated licensee, which shall automatically inactivate the license.
- (2) If the pocket card is unavailable, the principal broker shall promptly so notify the commission in writing.
- (e) A license inactivated under this section may be transferred to another principal broker upon application of the licensee, payment of the relevant fee, and submission of a statement that he or she is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents or any other pertinent information belonging to the licensee's previous principal broker or firm.

### **17-42-311. Violations.**

(a) The following acts, conduct, or practices are prohibited, and any licensee found guilty shall be subject to disciplinary action as provided in § 17-42-312:

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment;
  - (2) Violating any of the provisions of this chapter or any rules or regulations adopted pursuant to this chapter or any order issued under this chapter;
  - (3) Being convicted of or pleading guilty or nolo contendere to a felony or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness regardless of whether the imposition of sentence has been deferred or suspended;
  - (4) Making any substantial misrepresentation;
  - (5) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce, persuade, or influence any person to act thereon;
  - (6) Failing within a reasonable time to account for or to remit any moneys coming into his or her possession which belong to others;
  - (7) Committing any act involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness;
  - (8) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom he or she acts or accepting a commission or valuable consideration for the performance of any of the acts specified in this chapter from any person except the licensed principal broker under whom he or she is licensed;
  - (9) Acting as a broker or salesperson while not licensed with a principal broker, representing or attempting to represent a broker other than the principal broker with whom he or she is affiliated without the express knowledge and consent of the principal broker, or representing himself or herself as a salesperson or having a contractual relationship similar to that of a salesperson with anyone other than a licensed principal broker;
  - (10) Advertising in a false, misleading, or deceptive manner;
  - (11) Being unworthy or incompetent to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public;
  - (12) Paying a commission or valuable consideration to any person for acts or services performed in violation of this chapter, including paying a commission or other valuable consideration to an unlicensed person for participation in a real estate auction; and
  - (13) Any other conduct, whether of the same or a different character from that specified in this section, which constitutes improper, fraudulent, or dishonest dealing.
- (b) Any license obtained through mistake or inadvertence shall be subject to revocation.
- (c) A licensee whose license is revoked pursuant to this section shall be eligible to apply for a new license after the expiration of two (2) years from the date of revocation.

### **17-42-312. Investigation of complaint -- Penalties.**

(a) (1) The Arkansas Real Estate Commission may, on its own motion, and shall, upon the verified complaint in writing of any person, provided that the complaint and any evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate sales person regardless of whether the transaction was for his or her own account or in his or her capacity as a broker or salesperson.

(2) If the complaint fails to state a prima facie case or if, after investigation, the Executive Director of the Arkansas Real Estate Commission determines that there is insufficient proof of a violation of this chapter, the executive director shall dismiss the complaint.

(3) If, however, the executive director determines that there is sufficient proof of a violation of this chapter, the licensee shall be notified of the charges against him or her and ordered to appear for a hearing.

(4) If the licensee is found to have violated this chapter, the commission may impose any one (1) or more of the following sanctions:

- (A) Suspension, revocation, or denial of his or her license or the renewal thereof;
- (B) A penalty not to exceed one thousand dollars (\$1,000) for each violation;
- (C) Require completion of appropriate educational programs or courses;
- (D) Require successful completion of an appropriate licensing examination;
- (E) Place conditions or restrictions upon the licensee's license or practice; or
- (F) Such other requirements or penalties as may be appropriate to the circumstances of the case and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(b) The commission is authorized to file suit in either the Pulaski County Circuit Court or the circuit court of any county in which the defendant resides or does business to collect any penalty assessed pursuant to this chapter if the penalty is not paid within the time prescribed by the commission.

(c) When deemed appropriate, the commission may suspend the imposition of any sanctions imposed upon appropriate terms and conditions.

#### **17-42-313. Dismissal of complaint -- Appeal.**

(a) Any person whose complaint against a licensed real estate broker or salesperson is dismissed by the Executive Director of the Arkansas Real Estate Commission without a hearing may appeal the dismissal to the Arkansas Real Estate Commission subject to and in accordance with the following provisions:

(1) The request for appeal must be in writing and received in the office of the commission not later than sixty (60) days following the date of dismissal by the executive director;

(2) The request for appeal must be accompanied by such filing fee as the commission may require pursuant to § 17-42-304; and

(3) (A) (i) The appellant must also pay the cost of preparing the record for the commission's review, which cost shall be determined by the commission.

(ii) The costs must be paid by the appellant within thirty (30) days after notification of the amount. Otherwise, the appeal will be dismissed.

(B) However, if the commission's review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(C) Any person who is indigent and unable to pay either the filing fee or the cost of the record, or both, may file a pauper's oath in such form as required by the commission, and, if the commission determines that the appellant is indeed indigent, the filing fee or cost of the record, or both, shall be waived.

(b) (1) All appeals duly perfected pursuant to subsection (a) of this section shall be presented to and decided by the commission on the written record.

(2) Such a decision may be to affirm the executive director's dismissal, to order additional investigation, or to order a hearing on the complaint.

#### **17-42-314. Hearings.**

(a) Proceedings under § 17-42-312 and hearings on denials of licenses shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except in cases in which a licensee has obtained a license by false or fraudulent representation, the Arkansas Real Estate Commission shall not investigate the actions of or conduct any disciplinary hearing regarding any real estate broker or salesperson unless the complaint is filed or the investigation initiated

within three (3) years from the date of the actions complained of or concerning which an investigation is initiated.

#### **17-42-315. Criminal background check.**

(a) (1) Beginning January 1, 2006, the Arkansas Real Estate Commission may require each original applicant for a license issued by the commission to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) (A) An applicant may sit for the examination required by § 17-42-302(a)(4) while awaiting the results of a background check prescribed by this section.

(B) No license shall be issued to an applicant until the commission receives and approves the state and federal criminal background check.

(b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the commission and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall be allowed to retain the fingerprint card of the applicant until notified by the commission that the person is no longer licensed.

(f) Except as provided in subsection (g) of this section, a person shall not receive or hold a license issued by the commission if the person has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness.

(g) (1) The provisions of subsection (f) of this section may be waived by the commission upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to sanctions.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

(h) (1) Any information received by the commission from the Identification Bureau of the Department of Arkansas State Police or the Federal Bureau of Investigation pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to sanctions shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(k) The commission may adopt rules and regulations to fully implement the provisions of this section.

**17-42-316. Agency relationship and duties generally.**

- (a) The common law of agency under Arkansas as supplemented by this section applies to the relationship between a licensee and the licensee's client.
- (b) (1) In accepting employment by a client, a licensee pledges a primary duty of absolute fidelity to protect and promote the interests of the client or clients.
- (2) The licensee's duty includes without limitation the obligation to:
  - (A) Use reasonable efforts to further the interest of the client;
  - (B) Exercise reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship;
  - (C) Perform the terms of the written agency agreement;
  - (D) Follow lawful instructions of the client unless doing so would expose the licensee to liability from another party to a contract, lease, or rental agreement;
  - (E) Perform all duties specified in this section in a manner that demonstrates loyalty to the interests of the client;
  - (F) Comply with all requirements of this section and other applicable statutes, rules, and regulations;
  - (G) Disclose to the client material facts of the transaction that the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential information under a current or prior agency or dual agency relationship;
  - (H) Advise the client to obtain expert advice concerning material matters when necessary or appropriate;
  - (I) Account in a timely manner for all moneys and property received in which the client has or may have an interest;
  - (J) Keep confidential all confidential information; and
  - (K) Refrain from disclosing confidential information to a licensee who is not an agent of the client.
- (c) The duties required of a licensee under this section may not be waived by a client.

**17-42-317. Representing seller or lessor in an agency relationship.**

- (a) When representing a seller or lessor in an agency relationship, a licensee shall:
  - (1) (A) Use reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor.
  - (B) Unless requested by the seller or lessor, the licensee is not obligated to seek additional offers if the property is subject to a contract of sale, lease, or letter of intent to lease;
  - (2) Accept delivery of and present an offer to the seller or lessor in a timely manner, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease;
  - (3) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:
    - (A) Answer the seller's or lessor's questions regarding the steps the seller or lessor must take to fulfill the terms of a contract; and
    - (B) Provide information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge; and
  - (4) Assist the seller or lessor in developing, communicating, and presenting offers or counteroffers.
- (b) A licensee does not breach a duty or an obligation to a seller or lessor with whom the licensee has an agency relationship by showing alternative properties to a prospective buyer or by acting as an agent or subagent for other sellers or lessors.
- (c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

**17-42-318. Representing buyer or lessee in an agency relationship.**

(a) When representing a buyer or lessee in an agency relationship, a licensee shall:

(1) (A) Use reasonable efforts to locate a property at a price and with purchase or lease terms acceptable to the buyer or lessee.

(B) Unless requested by the client, the licensee is not obligated to seek additional purchase or lease possibilities if the buyer or lessee has contracted to purchase or lease or has extended a letter of intent to lease suitable property;

(2) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:

(A) Answer the buyer's or lessee's questions regarding the steps the buyer must take to fulfill the terms of any contract; and

(B) Provide information to the buyer or lessee regarding offers or counteroffers;

(3) Assist the buyer or lessee in developing, communicating, and presenting offers or counteroffers; and

(4) In a timely manner:

(A) Present an offer to purchase or lease to the seller or lessor or their agent, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease; and

(B) Accept delivery of and present any counteroffers to the buyer or lessee.

(b) If a dual or multiple agency relationship is disclosed under § 17-42-108, a licensee does not breach a duty or an obligation to the buyer or lessee by:

(1) Showing property to other buyers or lessees; or

(2) Acting as an agent or subagent for other buyers or lessees or as an agent or subagent for sellers or lessors.

(c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

**17-42-319. Waiver of agency duties.**

(a) A licensee shall perform the duties required under § 17-42-317 or § 17-42-318 unless the client agrees to waive these duties and signs a waiver of duties statement that contains:

(1) A list of the fiduciary duties required of all licensees under § 17-42-316;

(2) A list of the duties contained in § 17-42-317 or § 17-42-318 set forth in a manner that allows for the parties to indicate each duty that is being waived; and

(3) The following language in at least 10-point boldface type:

"Agreement to Waive

By signing below, I agree that the real estate licensee who represents me will not perform the duties that are initialed above. I also understand that in a proposed real estate transaction, no other real estate licensee will perform the waived duties, and I realize that I may need to hire other professionals such as an attorney.

\_\_\_\_\_  
Signature of Client      Date

\_\_\_\_\_  
Signature of Licensee      Date"

(b) If a licensee enters into an agency relationship containing the waivers outlined in this (1) Any moneys of others, including without limitation earnest money, advance fees, or security deposits are not to be transmitted or kept by the licensee, notwithstanding other applicable statutes and rules; and

(2) A licensee for a buyer or lessee remains authorized to present offers to buy, lease, or rent real property directly to the licensee's principal notwithstanding a:

(A) Waiver under subsection (a) of this section; or

(B) Conflicting statute or rule.

## **SUBCHAPTER 4 - APPLICABILITY - REAL ESTATE RECOVERY FUND – DISCIPLINARY ACTIONS**

### **SECTION**

17-42-401. Applicability.

17-42-402. Construction.

17-42-403. Creation - Administration.

17-42-404. Fees - Use of fund.

17-42-405. Additional fees.

17-42-406. Disciplinary hearing - Procedure.

17-42-407. Jurisdiction.

17-42-408. Appeal.

17-42-409. Subrogation - Suspension of license.

17-42-410. Applicability of Acts 1997, No. 781.

### **17-42-401. Applicability.**

The provisions of this subchapter shall apply only to:

(1) Licensees who were licensed at the time of the occurrence of the acts or violations complained of; and

(2) Acts or violations which occur after December 31, 1979.

### **17-42-402. Construction.**

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

### **17-42-403. Creation - Administration.**

There is created and established the "Real Estate Recovery Fund", which shall be maintained and administered by the Arkansas Real Estate Commission as provided in this subchapter.

### **17-42-404. Fees - Use of fund.**

(a) The Arkansas Real Estate Commission shall set the fees at such amount as it deems necessary to initially establish the Real Estate Recovery Fund and to reestablish the fund at the beginning of each annual renewal period. However, the fees shall not exceed the limits set forth in § 17-42-405.

(b) The assets of the fund may be invested and reinvested as the commission may determine, with the advice of the State Board of Finance.

(c) Any amounts in the fund may be used by the commission for the following additional purposes:

(1) (A) To fund educational seminars and other forms of educational projects for the use and benefit generally of licensees.

(B) The production and distribution of informational literature of an educational nature shall qualify as educational projects;

(2) To fund real estate chairs or courses at various state institutions of higher learning for the purpose of making such courses available to licensees and the general public;

(3) To fund research projects in the field of real estate; and

(4) To fund any and all other educational and research projects of a similar nature having to do with the advancement of the real estate field in Arkansas.

#### **17-42-405. Additional fee.**

(a) In addition to the other fees provided for in this chapter and regulations of the Arkansas Real Estate Commission, each licensed real estate broker and salesperson shall pay to the commission for the benefit of the Real Estate Recovery Fund a fee as the commission may require, not to exceed the lesser of:

(1) Twenty-five dollars (\$25.00) per annual renewal; or

(2) An amount sufficient to restore the fund balance to two hundred fifty thousand dollars (\$250,000).

(b) Likewise, each person who becomes a licensee for the first time shall at that time pay to the commission for the benefit of the fund such fee as the commission may require, not to exceed twenty-five dollars (\$25.00).

(c) No fees collected under the provisions of this subchapter may be expended from the fund except for the purposes set forth in this subchapter.

#### **17-42-406. Disciplinary hearing - Procedure.**

(a) (1) In any disciplinary hearing before the Arkansas Real Estate Commission which involves any licensee who has allegedly violated any provision of this chapter or commission regulations, the commission shall first determine whether a violation has occurred.

(2) If so, the commission shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-42-407.

(3) The commission shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4) If that amount has not been paid within thirty (30) days following entry of the commission's final order in the matter and the order has not been appealed to the circuit court, then the commission shall pay, upon request, from the Real Estate Recovery Fund to the aggrieved party or parties the amount specified. However, the commission shall not:

(A) Pay in excess of twenty-five thousand dollars (\$25,000) for any one (1) violation or continuing series of violations, regardless of the number of licensees who participated in such a violation or continuing series of violations; or

(B) Pay an amount in excess of the fund balance.

(b) The question of whether or not certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the commission.

(c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of seventy-five thousand dollars (\$75,000) with respect to:

(1) The acts of any one (1) licensee; or

(2) Any group of related claims.

(d) Whether or not a claim is one (1) of a group of related claims shall be a matter solely within the discretion and judgment of the commission.

(e) When unsatisfied or pending claims are such that they exceed the limits payable under subsection (c) of this section, the commission shall be the sole determinant of how the available funds shall be allocated among such claims.

#### **17-42-407. Jurisdiction.**

(a) The Arkansas Real Estate Commission's jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-42-406 is limited to actual, compensatory damages. The commission shall not award punitive or exemplary damages, nor shall it award interest on damages.

(b) Likewise, the appellate jurisdiction of the circuit court is limited to the awarding of actual, compensatory damages.

(c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.

(d) The circuit court's jurisdiction over the Real Estate Recovery Fund shall be limited to appeals from the commission's orders.

(e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:

- (1) The amount determined by the commission; or
- (2) The limits set forth in § 17-42-406.

#### **17-42-408. Appeal.**

(a) An appeal may be taken to the circuit court from a final order of the Arkansas Real Estate Commission in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal shall automatically stay that portion of the commission's order which directs the payment of damages, and neither the licensee nor the commission shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Supreme Court.

#### **17-42-409. Subrogation - Suspension of license.**

Upon the payment by the Arkansas Real Estate Commission of any amount of money under the provisions of § 17-42-406:

(1) The recipients of the payment, to the extent of the payment, shall assign to the commission all rights and claims that they may have against the licensee involved;

(2) The commission shall be subrogated to all of the rights of the recipients of the payment, to the extent of the payment; and

(3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the commission for the payment, plus interest at a rate to be determined by the commission. The rate shall not exceed ten percent (10%) per annum.

#### **17-42-410. Applicability of Acts 1997, No. 781.**

The increased limits provided by § 17-42-406(a)(4)(A) shall apply only to acts or violations which occur after August 1, 1997. Any acts or violations which occur prior to that date shall continue to be governed by the previous limits of ten thousand dollars (\$10,000).

## **SUBCHAPTER 5 - RENEWAL OF LICENSES**

### **SECTION**

- 17-42-501. Renewal or reactivation requirements.
- 17-42-502. Curriculum.
- 17-42-503. Non-qualifying courses or events.
- 17-42-504. Qualifying courses.
- 17-42-505. Instructor credentials.
- 17-42-506. Credit - Certificate of attendance.
- 17-42-507. Monitoring courses.

#### **17-42-501. Renewal or reactivation requirements.**

(a) As a condition precedent to renewal or activation of licenses, licensees shall meet the following requirements:

(1) (A) Licensees on inactive status are not required to comply with this subchapter during their inactive status.

(B) Prior to activation of a license on inactive status, the licensee shall satisfactorily complete six (6) classroom hours or equivalent continuing education units or equivalent correspondence work of continuing education for each year inactive not to exceed thirty (30) classroom hours. However, that will satisfy the requirements only for that particular license year and not for the following license year;

(2) (A) (i) Persons licensed as real estate brokers or salespersons shall successfully complete annually six (6) classroom hours or equivalent continuing education units or equivalent distance education of continuing education or a course that the Arkansas Real Estate Commission has determined demonstrates a mastery of an acceptable real estate subject.

(ii) No more than one (1) hour or equivalent continuing education unit shall be in a specific topic or topics as identified by the commission in § 17-42-502.

(B) Those persons shall be deemed to have successfully completed the continuing education requirements for the licensing year following the year in which first licensed in Arkansas; and

(3) A nonresident licensee may meet the Arkansas continuing education requirements by taking courses which meet the continuing education requirements of his or her resident state for the licensing year in question, provided that:

(A) The course or courses consist of no fewer than six (6) classroom hours or equivalent continuing education units of real estate-related subjects and otherwise comply with the minimum requirements of this subchapter; and

(B) Evidence of such compliance satisfactory to the commission is submitted in form, manner, and content prescribed by the commission.

(b) The commission may waive all or part of the requirements of subsection (a) of this section for any licensee who submits satisfactory evidence of inability to meet the continuing education requirements due to health reasons or other hardship or extenuating circumstances beyond the licensee's control.

(c) Licenses for persons who apply for renewal of their licenses and who do not provide to the commission evidence of meeting the continuing education requirements but who have otherwise met all requirements for license renewal shall be placed on inactive status until the evidence is provided to the commission.

#### **17-42-502. Curriculum.**

(a) (1) The Arkansas Real Estate Commission may establish the continuing education curriculum by identifying subject matter topics.

(2) The commission may identify a specific topic or topics of not more than one (1) hour to be included in the six-classroom-hour annual continuing education requirement.

(3) The commission shall not require licensees to complete specific courses within the subject matter topics.

(4) Changes in the curriculum shall be applicable beginning with the license renewal period subsequent to the curriculum change.

(b) The State Board of Private Career Education shall approve continuing education courses and may approve only those continuing education courses which meet the criteria prescribed by the commission. In establishing such criteria, the commission shall give due consideration to the advice and recommendations of the board.

(c) The board shall determine the classroom hour equivalency of correspondence courses.

#### **17-42-503. Non-qualifying courses or events.**

(a) The following do not qualify as continuing education:

(1) Courses of instruction designed to prepare a student for passing the real estate broker or salesperson examinations, except as provided in § 17-42-501(a);

(2) Sales promotions or other meetings held in conjunction with the general business of the licensee; and

(3) Time devoted to breakfasts, luncheons, and dinners.

(b) The same course may not be used to meet the continuing education requirement two (2) times during the same license year.

#### **17-42-504. Qualifying courses.**

The following courses and their instructors are not required to obtain the approval of the State Board of Private Career Education in order to qualify as continuing education courses in this subchapter:

(1) Courses in real estate-related subjects offered by the National Association of Realtors, the National Association of Real Estate Brokers, or their societies, institutes, or councils;

(2) Courses in real estate-related subjects offered or approved by the Arkansas Real Estate Commission; and

(3) Courses of at least three (3) semester hours or equivalent in real estate subjects acceptable to the commission offered by colleges or universities.

#### **17-42-505. Instructor credentials.**

(a) Except as provided in this subchapter, instructors in continuing education courses shall file credentials with the State Board of Private Career Education showing the necessary specialized preparation, training, and experience to ensure competent and qualified instruction.

(b) The board will prescribe instructor qualification credentials and education requirements based upon advice and recommendation of the Arkansas Real Estate Commission.

#### **17-42-506. Credit -- Certificate of attendance.**

(a) Credit shall be earned on the basis of attendance.

(b) (1) A certificate of attendance which states the name of the student, the name of the school or sponsor of the course, the date the course was completed, the number of classroom hours of instruction covered by the individual course, and such other information as the Arkansas Real Estate Commission may require shall be presented to each attendee upon completion of the course.

(2) No certificate of attendance shall be issued to a licensee who is absent for more than ten percent (10%) of the classroom hours.

(3) Either a copy of the certificate or other proof of satisfactory completion of the course acceptable to the commission shall be furnished to the commission by the licensee.

(4) It is the licensee's responsibility to establish his or her successful completion of a continuing education course.

#### **17-42-507. Monitoring courses.**

The Arkansas Real Estate Commission or its designee is authorized to attend and monitor any courses of instruction offered or to be offered as meeting the requirements of this chapter.

### **SUBCHAPTER 6 - INTEREST ON TRUST ACCOUNTS PROGRAM**

#### **SECTION**

17-42-601. Establishment of program.

17-42-602. Notice.

17-42-603. Disposition of funds.

#### **17-42-601. Establishment of program.**

(a) The Arkansas Real Estate Commission is hereby authorized and empowered, subject to the following restrictions and limitations, to establish a program authorizing and permitting the collection of interest on real estate brokers' trust accounts and the disbursement of the interest by the depository institutions involved to an Arkansas nonprofit corporation for use for such tax-exempt purposes as are hereinafter set forth.

(b) Participation in the program shall be completely voluntary with each broker rather than mandatory.

#### **17-42-602. Notice.**

(a) All real estate brokers participating in the interest on real estate brokers' trust accounts program shall post a notice at least four inches by seven inches (4" x 7") stating that they participate in the interest on real estate brokers' trust accounts program.

(b) The notice shall be displayed prominently and shall contain information concerning the purposes for which the interest accumulating on the account shall be used, and shall state: "If funds belonging to you are deposited in this firm's trust account, any interest earned therefrom will be forwarded by the depository bank to a nonprofit organization which will dispense the funds to provide for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation selected by the Arkansas Real Estate Commission."

#### **17-42-603. Disposition of funds.**

(a) (1) The recipient of the funds generated by the interest on real estate brokers' trust account program shall be such Arkansas nonprofit corporation as the Arkansas Real Estate Commission shall designate.

(2) The corporation shall be governed by a board of directors consisting of not fewer than five (5) nor more than fifteen (15) members.

(3) At least sixty percent (60%) of the total number of directors shall be appointed by the commission and the remainder by the Arkansas Realtors Association.

- (4) The corporation shall be tax exempt as defined by § 501(c)(3) of the Internal Revenue Code.
- (b) The funds generated by the program shall be used for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation specified in this section.

## **SUBCHAPTER 7 - INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIPS**

### **SECTION**

17-42-701. Definitions.

17-42-702. Interference with licensee relationships prohibited.

#### **17-42-701. Definitions.**

As used in this subchapter:

(1) "Actual introduction" means the referral of a principal to a licensee by the person or entity seeking the referral fee before the principal and licensee have engaged in material discussions regarding a specific real estate transaction;

(2) (A) "Interference with a licensee relationship" means:

- (i) A demand for a referral fee from a licensee when reasonable cause for payment does not exist;
- (ii) A threat to reduce, withhold, or eliminate any relocation or other benefits or the actual reduction, withholding, or elimination of any relocation or other benefit for the purpose of obtaining a referral fee from a licensee when reasonable cause for payment does not exist; or
- (iii) An attempt to induce a principal to breach or terminate a representation agreement for the purpose of replacing that agreement with another representation agreement in order to obtain a referral fee.

(B) "Interference with a licensee relationship" does not mean:

- (i) Communications between an employer or an employer's representative and an employee concerning relocation policies and benefits if the communication does not involve advice about or encouragement to terminate or amend an existing representation agreement; and
- (ii) Advice to a principal about the right to allow a licensee relationship to expire under its own terms or not to renew the licensee relationship upon its expiration;

(3) "Licensee relationship" means an agreement between a licensee and a principal under which the licensee agrees to act as a principal broker as defined in § 17-42-103;

(4) "Principal" means the buyer, seller, landlord, or tenant in a licensee relationship;

(5) "Reasonable cause for payment" means the creation of a cooperative or subagency relationship between licensees or a representation agreement as the result of an actual introduction of business;

(6) (A) "Referral fee" means any mutually agreed-upon fee, commission, or other consideration to be paid by a licensee to any person or entity.

(B) "Referral fee" does not mean a cooperative commission offered by a listing licensee

(7) (A) "Representation agreement" means an agreement between a principal and a licensee in which the licensee agrees to perform any of the activities of a principal broker.

(B) "Representation agreement" includes:

- (i) A buyer's agency agreement, a property listing agreement, and a cooperative brokerage agreement; and
- (ii) Any agreement containing any of the agreements described in subdivision (7)(B)(i) of this section.

**17-42-702. Interference with licensee relationships prohibited.**

(a) No person shall knowingly interfere with a licensee relationship between a licensee and a person or entity.

(b) No licensee shall be liable for a referral fee when reasonable cause for payment does not exist.

(c) (1) Any person or entity aggrieved by a violation of this subchapter may bring a civil action in any court of competent jurisdiction.

(2) The damages recoverable in an action under subdivision (c)(1) of this section shall be:

(A) The actual damages; and

(B) Reasonable attorney's fees and expenses.

(d) Nothing in this subchapter is intended to:

(1) Create a presumption that if reasonable cause for payment of a referral fee exists, a legal right to the referral fee exists; or

(2) Authorize the payment of a referral fee that is otherwise prohibited by law or regulation of the Arkansas Real Estate Commission.

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## **TITLE 18**

### **CHAPTER 14**

#### **REAL ESTATE TIME-SHARING**

##### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
  2. ADMINISTRATION AND REGISTRATION.
  3. CREATION, TERMINATION, AND MANAGEMENT.
  4. PROTECTION OF PURCHASERS.
  5. ADVERTISING.
  6. FINANCING.
  7. CAMPING SITES
- 

##### **SUBCHAPTER 1 - GENERAL PROVISIONS**

##### **SECTION.**

- 18-14-101. Title.
- 18-14-102. Definitions.
- 18-14-103. Applicability.
- 18-14-104. Legal status of time-share estates.
- 18-14-105. Regulatory discrimination prohibited.

##### **18-14-101. Title.**

This chapter shall be known and may be cited as the Arkansas Time-Share Act.

##### **18-14-102. Definitions.**

As used in this chapter:

- (1) "Acquisition agent" means a person who by means of telephone, mail, advertisement, inducement, solicitation, or otherwise in the ordinary course of the acquisition agent's business attempts directly to encourage any person to attend a sales presentation for a time-share program;
- (2) "Agency" means the Arkansas Real Estate Commission, which is an agency within the meaning of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
- (3) "Developer" in the case of any given property, means any person or entity which is in the business of creating or which is in the business of selling its own time-share intervals in any time-share program. This definition does not include a person acting solely as a sales agent;
- (4) "Development", "project", or "property" means all of the real property subject to a project instrument and containing more than one (1) unit;
- (5) "Exchange agent" means a person who exchanges or offers to exchange time-share intervals in an exchange program with other time-share intervals;
- (6) "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share program;

(7) "Offering" means any offer to sell, solicitation, inducement, or advertisement made in this state, whether directly or indirectly, whether by radio, television, newspaper, magazine, or by mail, whereby a person is given an opportunity or encouraged to acquire a time-share interval. This definition shall not include a property owner who may refer persons to a developer-owned subdivision provided that the owner's activities are limited to the referral of a prospective purchaser to the developer-owned subdivision and the time-share owner receives only nominal consideration which is not contingent upon the sale of a time-share interval;

(8) "Person" means one (1) or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

(9) "Project instrument" means one (1) or more recordable documents applicable to the whole project, by whatever name denominated, containing restrictions or covenants regulating the use, occupancy, or disposition of an entire project, including any amendments to the document but excluding any law, ordinance, or governmental regulation;

(10) "Public offering statement" means that statement required by § 18-14-404;

(11) "Purchaser" means any person other than a developer or lender who acquires an interest in a time-share interval;

(12) "Sales agent" means a person who sells, or offers to sell, in his or her ordinary course of business, time-share intervals in a time-share program to a purchaser. All such sales agents shall be licensed and subject to the provisions of § 17-42-101 et seq. Provided, however, that the provisions of § 17-42-401 et seq., pertaining to the Real Estate Recovery Fund shall not apply to violations occurring as a result of, or in connection with, any time-share activity;

(13) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee such as tenants in common, time-span ownership, or interval ownership, and a time-share lease;

(14) "Time-share instrument" means any document, by whatever name denominated, creating or regulating time-share programs, but excluding any law, ordinance, or governmental regulation;

(15) "Time-share interval" means a time-share estate or a time-share use;

(16) "Time-share program" means any arrangement for time-share intervals in a time-share project whereby the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of three (3) years in duration;

(17) "Time-share project" means any real property that is subject to a time-share program;

(18) "Time-share use" means any contractual right of exclusive occupancy which does not fall within the definition of a time-share estate including, without limitation, a vacation license, club membership, limited partnership, or vacation bond pertaining to a time-share program; and

(19) "Unit" means the real property or real property improvement in a project which is divided into time-share intervals.

### **18-14-103. Applicability.**

This chapter shall apply to any time-share program created or commenced after February 25, 1983, and ninety (90) days thereafter as to any time-share program heretofore created or commenced with respect to the requirements of §§ 18-14-201 et seq., 18-14-401 et seq., and 18-14-501 et seq.

### **18-14-104. Legal status of time-share estates.**

(a) A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law. It may include an estate for years with a remainder over in fee simple or an estate for years with no remainder if a leasehold. The foregoing shall supersede any contrary rule at common law.

(b) A document transferring or encumbering a time-share estate in real property may not be rejected for recordation because of the nature or duration of that estate or interest.

(c) Each time-share estate constitutes, for purposes of title, a separate estate or interest in property, except for real property tax purposes.

#### **18-14-105. Regulatory discrimination prohibited.**

A zoning, subdivision, or other ordinance or regulation may not discriminate against the creation of time-share intervals or impose any requirement upon a time-share program which it would not impose upon a similar development under a different form of ownership.

## **SUBCHAPTER 2 - ADMINISTRATION AND REGISTRATION**

### **SECTION**

18-14-201. Powers and duties of state agency.

18-14-202. Registration, etc., with agency required.

18-14-203. Exemptions from registration.

18-14-204. Application for registration.

18-14-205. Material changes.

18-14-206. Effectiveness of registration or amendment.

18-14-207. Regulation and use of public offering statement.

#### **18-14-201. Powers and duties of state agency.**

(a) The agency may adopt, amend, and repeal rules or regulations and issue orders consistent with, and in furtherance of, the objectives of this chapter. The agency may prescribe forms and procedures for submitting information to the agency.

(b) The agency may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

(c) The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the agency's duties.

(d) The agency may initiate private investigations within or without this state.

(e) The agency, after notice and hearing, may issue a notice of suspension if any of the following conditions exist:

- (1) Any representation in any document or information filed with the agency is false or misleading;
- (2) Any developer or agent of a developer has engaged or is engaging in any unlawful act or practice;
- (3) Any developer or agent of a developer has disseminated or caused to be disseminated, orally or in writing, any false or misleading promotional materials in connection with a time-share program;
- (4) Any developer or agent of a developer has concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-share intervals in the time-share program;

(5) Any developer or agent of a developer has failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that time-share program; or

(6) Any developer or agent of a developer has otherwise violated any provision of this chapter or the agency's rules, regulations, or orders.

(f) The agency may issue a cease and desist order if the developer has not registered the time-share program as required by this chapter.

(g) The agency, after notice and hearing, may issue an order revoking the registration of a time-share program upon determination that a developer or agent of a developer has failed to comply with a notice of suspension issued by the agency, which order affects the time-share program.

#### **18-14-202. Registration, etc., with agency required.**

(a) (1) Unless exempted by § 18-14-203, a developer may not offer or dispose of a time-share interval unless the time-share program is registered with the agency. However, a developer may accept a reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers and is refundable at any time at the purchaser's option.

(2) In all cases, a reservation must require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation.

(3) A developer may not dispose of or transfer a time-share interval while an order revoking or suspending the registration of the time-share program is in effect.

(b) (1) An acquisition agent shall register the time-share program or programs for which it is providing prospective purchasers with the agency unless there is an effective registration of the program or programs filed with the agency by the developer.

(2) In any event, the acquisition agent shall be required to furnish to the agency its principal office address and telephone number and designate its responsible managing employee. The acquisition agent shall also furnish such additional information as the agency may require.

(3) The acquisition agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any violations of any solicitation ordinances, zoning ordinances, building codes, or other regulations governing the use of the premises in which the time-share program is promoted.

(4) Each acquisition agent shall renew the registration at least annually and shall pay a filing fee of fifty dollars (\$50.00) for the registration and each renewal thereof.

(c) A sales agent shall register with the agency the time-share program or programs for which it is selling unless there is an effective registration of the program or programs filed with the agency by the developer. In any event, the sales agent shall be required to furnish to the agency its principal office address and telephone number and designate its responsible managing employee and any special escrow accounts set up for the deposit and collection of purchasers' funds and shall furnish such additional information as the agency may require. The sales agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any defalcations of the sales agent. Each individual sales agent shall renew his or her registration annually and shall pay a filing fee of fifty dollars (\$50.00) for the registration and each renewal thereof.

(d) A managing agent shall register with the agency the time-share program or programs for which it is managing unless there is an effective registration of the program or programs filed with the agency by the developer. In any event, the managing agent shall be required to furnish to the agency its principal office address and telephone number, to designate its responsible managing employee, and to furnish such additional information as the agency may require. The managing agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any default of the managing agent of his or her duties and responsibilities. Each managing agent shall renew the registration at least annually and shall pay a filing fee of fifty dollars (\$50.00) with each registration and renewal thereof.

(e) In the event that the acquisition agent, sales agent, or management agent is under the control of, a subsidiary of, or affiliate of the developer or any person, the bond as to such agents, whether one (1) or more, can be consolidated and reduced to fifty thousand dollars (\$50,000), provided that there is a disclosure of the affiliation to the agency. When the developer registers additional time-share projects, including additional phases of existing time-share projects, with the commission, the developer shall not be required to furnish an additional bond or increase the existing bond for the additional registration provided the initial bond remains in effect.

(f) An exchange agent, including the developer if it is also the exchange agent, shall file a statement with the agency containing a list of the time-share program or programs that it is offering exchange services for, indicate its principal office address and telephone number, and designate who its responsible managing employee is or the person to whom any contact is to be made.

(g) The acquisition agent and sales agent shall each maintain their respective records of any independent contractors employed by them, their addresses, and the commissions paid for the immediately preceding two (2) calendar years.

(h) Any interest earned on any bond or substitute therefor, whether cash, certificate of deposit, bank account, security, or other instrument, while on deposit with, or for the benefit of, the agency shall become the separate property of the agency and shall be deposited in the Real Estate Recovery Fund, as created in § 17-42-403.

#### **18-14-203. Exemptions from registration.**

(a) No registration with the agency shall be required if the developer is registered and there has been issued a public offering statement or similar disclosure document which is provided to purchasers under the following:

- (1) Securities and Exchange Act of 1933;
- (2) Arkansas Securities Act, § 23-42-101 et seq.;
- (3) Federal Interstate Land Sales Full Disclosure Act, in which the time-share program is made a part of the subdivision that is being registered; and

(4) (A) Any federal or state act which requires a federal or state agency to review a public offering statement, or similar disclosure document which is required to be distributed to purchasers, if the agency determines after review that the federal or state public offering statement is substantially equivalent to that required by this chapter and issues its certificate of exemption.

(B) Whenever a public offering statement is amended, and at least annually in any event, the public offering statement shall be submitted to the agency for its review and recertification.

(C) Applicants for certificates of exemption shall pay a filing fee of three hundred dollars (\$300) and any necessary investigation expenses as set forth in § 18-14-204(d) and a fee of one hundred fifty dollars (\$150) for each request for review and recertification pursuant to subdivision (a)(4)(B) of this section.

(b) No registration with the agency shall be required in the case of:

- (1) Any transfer of a time-share interval by any time-share interval owner other than the developer or his or her agent unless the transfer is made for the purpose of evading the provisions of this chapter;
- (2) Any disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure; or
- (5) A gratuitous transfer of a time-share interval.

#### **18-14-204. Application for registration.**

(a) An application for registration shall contain the public offering statement, a brief description of the property, copies of time-share instruments, financial statements prepared in accordance with generally

accepted accounting principles fully and fairly disclosing the current financial condition of the developer, and any documents referred to therein and such other information as may be required by the agency.

(b) If the dwelling units in the time-share project are in a condominium development or other common-interest subdivision, the application for registration shall contain evidence that the use of the units for time-share purposes is not prohibited by the project instruments and, if the project instruments do not expressly authorize time-sharing, evidence that purchasers in the condominium development or other common-interest subdivision were given at least sixty (60) days' notice in writing prior to the application for registration that the units would be used for time-share purposes. In the event the project instruments contain a prohibition against time-sharing, there must be a certification by the board of directors of the association that any procedures specified in the project instruments for the amendment of such instruments, in order to permit time-sharing, have been followed and that the project instruments have been duly amended to permit time-sharing.

(c) The application shall be accompanied by a filing fee of three hundred dollars (\$300) plus five dollars (\$5.00) for each twenty-five (25) time-share intervals or portions thereof. The filing fee shall not exceed the sum of five hundred dollars (\$500).

(d) The agency shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All direct expenses incurred by the agency in inspecting the real estate shall be borne by the applicant, and the agency may require a deposit sufficient to cover the direct expenses prior to incurring them.

(e) All applications for registration shall be updated and renewed at least annually, and the renewal shall be accompanied by a filing fee of one-half (1/2) the amount of the original filing fee.

#### **18-14-205. Material changes.**

A developer shall amend or supplement its registration to report any material change in the information required by § 18-14-204.

#### **18-14-206. Effectiveness of registration or amendment.**

(a) Except as hereinafter provided, the effective date of the registration or any amendment thereto, shall be the forty-fifth day after the filing thereof, or such earlier date as the agency may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any registration is filed prior to the effective date, the registration shall be deemed to have been filed when the amendment was filed.

(b) If it appears to the agency that the application for registration, or any amendment thereto is on its face incomplete or inaccurate in any material respect, the agency shall so advise the developer by listing each specific deficiency in writing prior to the date the registration would otherwise be effective. The notification shall serve to suspend the effective date of the filing until the tenth day after the developer files such additional information as the agency shall require. Any developer, upon receipt of the notice of deficiencies, may request a hearing, and the hearing shall be held within thirty (30) days of receipt of the request.

#### **18-14-207. Regulation and use of public offering statement.**

(a) The agency, at any time, may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers. In order to ensure adequate protection of the purchaser through disclosure, the agency may require that certain disclosures contained in the public offering statement be placed in boldface type.

(b) The public offering statement may not be used for any promotional purposes before registration, and the statement may be used afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the time-share program, the disclosure statement, or any of the documents contained in the application for registration.

## **SUBCHAPTER 3 - CREATION, TERMINATION, AND MANAGEMENT**

### **SECTION**

- 18-14-301. Time-share programs permitted.
- 18-14-302. Contents of instruments creating time-share estates.
- 18-14-303. Provisions for management and operation of time-share estate programs.
- 18-14-304. Developer control period.
- 18-14-305. Instruments creating time-share uses.
- 18-14-306. Provisions for management and operation of time-share use programs.
- 18-14-307. Partition of units.

#### **18-14-301. Time-share programs permitted.**

A time-share program may be created in any unit, unless expressly prohibited by the project instruments.

#### **18-14-302. Contents of instruments creating time-share estates.**

Project instruments and time-share instruments creating time-share estates must contain the following:

- (1) The name of the county in which the property is situated;
- (2) The legal description, street address, or other description sufficient to identify the property;
- (3) Identification of time periods by letter, name, number, or combination thereof;
- (4) Identification of time-share estates and, where applicable, the method whereby additional time-share estates may be created;
- (5) The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, where applicable, to each unit in a project that is not subject to the time-share program;
- (6) Any restrictions on the use, occupancy, alteration, or alienation of time-share intervals;
- (7) The ownership interest, if any, in personal property and provisions for care and replacement;
- (8) Any other matters the developer deems appropriate; and
- (9) Any provisions pertaining to the establishment of a lien against an owner's time-share interest in favor of the association of time-share estate owners to secure payment of common expenses. This lien when provided for in the time-share instrument shall be enforceable and foreclosable in the same manner in which other statutory liens are enforceable and foreclosable under the laws of this state.

#### **18-14-303. Provisions for management and operation of time-share estate programs.**

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units, which shall ordinarily include, but need not be limited to, provisions for the following:

- (1) Creation of an association of time-share estate owners;
- (2) Adoption of bylaws for organizing and operating the association;
- (3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;
- (4) Employment and termination of employment of the managing agent for the association;
- (5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;
- (6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;
- (7) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units and time-share project;

(8) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by owners, their guests, and other users;

(9) Methods for providing compensating use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

(10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units. Under these procedures an owner must be given notice and the opportunity to refute or explain the charges against him or her in person or in writing to the governing body of the association before a decision to impose discipline is rendered. Any monetary penalty may be secured by the lien provided for in § 18-14-302; and

(11) Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units.

#### **18-14-304. Developer control period.**

(a) The time-share instruments for a time-share estate program may provide for a period of time, hereafter referred to as the "developer control period", during which the developer, or a managing agent selected by the developer, may manage the time-share program and the units in the time-share program.

(b) If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall ordinarily include provisions for the following:

(1) Termination of the developer control period by action of the association;

(2) Termination of contracts for goods and services for the time-share program or for units in the time-share program entered into during the developer control period; and

(3) A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program.

#### **18-14-305. Instruments creating time-share uses.**

Project instruments and time-share instruments creating time-share uses must contain the following:

(1) Identification by name of the time-share project and street address where the time-share project is situated;

(2) Identification of the time periods, type of units, and the units that are in the time-share program and the length of time that the units are committed to the time-share program;

(3) In case of a time-share project, identification of which units are in the time-share program and the method whereby any other units may be added, deleted, or substituted; and

(4) Any other matters that the developer deems appropriate.

#### **18-14-306. Provisions for management and operation of time-share use programs.**

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units which shall ordinarily include, but need not be limited to, provisions for the following:

(1) Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of maid, cleaning, linen, and similar services to the units during use periods;

(2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;

(3) Payment of the costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Selection of a managing agent;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved, first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners, including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;

(9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users;

(10) Methods for providing compensating use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation;

(11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owner shall be given notice and the opportunity to refute or explain the charges, in person or in writing, to the management advisory board before a decision to impose discipline is rendered; and

(12) Annual dissemination to all time-share use owners by the developer, or by the managing agent, of a list of the names and mailing addresses of all current time-share use owners in the time-share program.

#### **18-14-307. Partition of units.**

No action for partition of a unit may be maintained except as permitted by the time-share instrument.

### **SUBCHAPTER 4 - PROTECTION OF PURCHASERS**

#### **SECTION**

18-14-401. Penalties.

18-14-402. Civil remedies.

18-14-403. Statute of limitations.

18-14-404. Required contents of public offering statements for time-share intervals.

18-14-405. Material changes.

18-14-406. Other statutes not applicable.

18-14-407. Escrow accounts or other financial assurances.

18-14-408. Guarantees for completion of time-share projects.

18-14-409. Mutual rights of cancellation.

18-14-410. Liens.

18-14-411. Financial records - Examination.

#### **18-14-401. Penalties.**

Any developer or any other person subject to this chapter who offers or disposes of a time-share interval without having complied with this chapter or who violates any provision of this chapter shall be guilty of a misdemeanor punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state prison or in the county jail not exceeding one (1) year, or by both fine and imprisonment.

#### **18-14-402. Civil remedies.**

(a) If a developer or any other person subject to this chapter violates any provision thereof or any provision of the project instruments, any person or class of persons adversely affected by the violation or violations has a claim for appropriate relief. Punitive damages or attorney's fees, or both, may be awarded for willful violation of this chapter.\

(b) The provisions of § 17-42-401 et seq. pertaining to the Real Estate Recovery Fund shall not apply to any claims arising from or damages caused by a violation or violations of this chapter or of the Real Estate License Law, § 17-42-101 et seq., or regulations by any licensee while engaged in any time-share activities.

#### **18-14-403. Statute of limitations.**

A judicial proceeding in which the accuracy of the public offering statement or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought must be commenced within four (4) years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond the period of limitation. However, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of four (4) years for each breach, but the parties may agree to reduce the period of limitation to not less than two (2) years.

#### **18-14-404. Required contents of public offering statements for time-share intervals.**

(a) A public offering statement must be provided to each purchaser of a time-share interval and must contain or fully and accurately disclose:

(1) The name of the developer and the principal address of the developer and the time-share intervals offered in the statement;

(2) A general description of the units including, without limitation, the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, that they have been completed;

(3) As to all units offered by the developer in the same time-share project:

(A) The types and number of units;

(B) Identification of units that are subject to time-share intervals; and

(C) The estimated number of units that may become subject to time-share intervals;

(4) A brief description of the project;

(5) If applicable, any current budget and a projected budget for the time-share intervals for one (1) year after the date of the first transfer to a purchaser. The budget must include, without limitation:

(A) A statement of the amount included in the budget as a reserve for repairs and replacement;

(B) The projected common expense liability, if any, by category or expenditures for the time-share intervals;

(C) The projected common expense liability for all time-share intervals; and

(D) A statement of any services not reflected in the budget that the developer provides or expenses that it pays;

(6) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(7) A description of any liens, defects, or encumbrances on, or affecting, the title to the time-share intervals;

(8) A description of any financing offered by the developer;

(9) A statement that, within five (5) days after execution of a contract of purchase, a purchaser may cancel any contract for purchase of a time-share interval from a developer;

(10) A statement of any pending suits material to the time-share intervals of which a developer has actual knowledge;

(11) Any restraints on alienation of any number or portion of any time-share intervals;

(12) A description of the insurance coverage which shall be provided for the benefit of time-share interval owners;

(13) Any current or expected fees or charges to be paid by time-share interval owners for the use of any facilities related to the property;

(14) The extent to which financial arrangements have been provided for completion of all promised improvements; and

(15) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

(b) If a purchaser is offered the opportunity to subscribe to any program that provides exchanges of time-shares among purchasers in either the same time-sharing project or other time-sharing projects, or both, the developer shall deliver to the purchaser, prior to the execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program. The purchaser shall certify in writing to the receipt of the written information, which information shall include, but is not limited to, the following:

(1) The name and address of the exchange program;

(2) The names of all officers and directors;

(3) Whether the exchange program, or any of its officers or directors, has any legal or beneficial interest in any developer or managing agent for any time-sharing plan participating in the exchange program and, if so, the name and location of the time-sharing plan and the nature of the interest;

(4) Unless otherwise stated, a statement that the purchaser's contract with the exchange program is a contract separate and distinct from the purchaser's contract with the developer;

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-sharing project with the exchange program;

(6) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

(7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made;

(8) A complete and accurate description of the procedure to qualify for and effectuate exchanges;

(9) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in bold-faced type and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

(10) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

(11) Whether and under what circumstances, a purchaser, in dealing with the exchange program, may lose the use and occupancy of his or her time-share in any properly applied for exchange without his or her being provided with substitute accommodations by the exchange program;

(12) The fees or range of fees for participation by purchasers in the exchange program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

(13) The name and address of the site of each accommodation or facility included in the time-sharing projects which are participating in the exchange program as of the last annual audit;

(14) The number of time-share units in each time-sharing project which are available for occupancy, pursuant to the last annual audit, and which qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

(15) The number of purchasers enrolled for each time-sharing project participating in the exchange program, pursuant to the last annual audit, expressed within the following numerical groupings: 1-100,

101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those purchasers who are currently enrolled with the exchange program;

(16) The disposition made by the exchange company of time-shares deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting changes;

(17) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported on an annual basis:

(A) The number of purchasers currently enrolled in the exchange program;

(B) The number of accommodations and facilities that have current written affiliation agreements with the exchange program;

(C) The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

(D) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share during the year in exchange for a time-share in any future year;

(E) The number of exchanges confirmed by the exchange program during the year; and

(18) A statement in bold-faced type to the effect that the percentage described in subdivision (b)(17)(C) of this section is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

(c) Each exchange company offering an exchange program to purchasers in this state must include the statement set forth in subdivision (b)(18) of this section on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company which also contain the percentage of confirmed exchanges described in subdivision (b)(17)(C) of this section.

(d) A developer may satisfy the requirements of this section by delivery to purchasers of materials furnished to the developer by the exchange program, provided the exchange program has certified to the developer that the materials satisfy the requirements of this section. A developer shall have no liability to any person if the materials furnished by the exchange program fail to comply with this section.

#### **18-14-405. Material changes.**

The developer shall amend or supplement the public offering statement to report any material change in the information required by § 18-14-404. As to any exchange program, the developer shall use the current written materials that are supplied to it for distribution to the time-share interval owners as it is received.

#### **18-14-406. Other statutes not applicable.**

(a) Any time-share program in which a public offering statement has been prepared pursuant to this chapter does not require registration under any of the following:

(1) Arkansas Securities Act, § 23-42-101 et seq.; or

(2) Any other Arkansas statute which requires the preparation of a public offering statement or substantially similar document for distribution to purchasers.

(b) Any time-share program that fails to restrict the price at which an owner may sell or exchange his or her time-share interval shall not by virtue of such failure cause the time-share interval to become a security under the Arkansas Securities Act. An exchange agent offering such a time-share interval for exchange shall not be construed to be offering a security under such act.

**18-14-407. Escrow accounts or other financial assurances.**

(a) Any deposit made in connection with the purchase or reservation of a time-share interval from a developer must be placed in a noninterest-bearing escrow account and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality until:

(1) Delivered to the developer at the expiration of the time for rescission or any later time specified in any contract or sale;

(2) Delivered to the developer because of the purchaser's default under a contract to purchase the time-share interval; or

(3) Refunded to the purchaser.

(b) (1) In lieu of any escrows required by this section, the agency shall have the discretion to accept other financial assurances including, but not limited to, a surety bond, an irrevocable letter of credit, or a cash deposit in an amount equal to the escrow requirements of this section.

(2) Interest earned on any such bond or other deposit while deposited with, or for the benefit of, the agency shall become the property of the agency and shall be deposited in the Real Estate Recovery Fund created in § 17-42-403.

**18-14-408. Guarantees for completion of time-share projects.**

(a) If a developer contracts to sell a time-share interval and the construction, furnishings, and landscaping of the time-share project have not been substantially completed in accordance with the representations made by the developer in the disclosures required by this chapter, the developer shall:

(1) Pay into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality, all payments received by the developer from the purchaser towards the sale price until the project is substantially complete. The escrow agent may invest the escrow funds in securities for the United States, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States. Funds shall be released from escrow as follows:

(A) If a purchaser properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the purchaser, together with any interest earned;

(B) If the purchaser defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer, together with any interest earned; or

(C) If the funds of a purchaser have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent upon substantial completion of the time-share project;

(2) The developer shall not be required to comply with subdivision (a)(1) of this section when the agency has been furnished and is satisfied that all of the following provisions have been met:

(A) That the developer is an Arkansas corporation or a foreign corporation qualified to do business in Arkansas;

(B) That the corporation has been in existence and operated for not less than three (3) years within the State of Arkansas;

(C) That the corporation has net assets within this state of an amount not less than three (3) times the cost to complete the time-share project; and

(D) The agency shall have the discretion to require such other assurances as may reasonably be required either to assure completion of the time-share project or to reimburse the purchaser all funds paid to the developer together with any interest earned; and

(3) (A) In lieu of any escrows required by this section, the agency shall have the discretion to accept other financial assurances including, but not limited to, a performance bond or an irrevocable letter of credit in an amount equal to the cost to complete the time-share project.

(B) Interest earned on any such bond, letter of credit, deposit, or other instrument while deposited with, or for the benefit of, the agency shall become the separate property of the agency and shall be deposited in the Real Estate Recovery Fund created in § 17-42-403.

(b) For the purpose of this section, "substantially completed" means that all amenities, furnishings, appliances, and structural components and mechanical systems of buildings on all real property dedicated to the project and subject to the project instruments are completed and provided as represented in the public offering statement, that the premises are ready for occupancy, and that the proper governmental authority has caused to be issued a certificate of occupancy.

#### **18-14-409. Mutual rights of cancellation.**

(a) Before transfer of a time-share interval, and no later than the date of any sales contract, the developer shall provide the intended transferee with a copy of the public offering statement and any amendments and supplements thereto. The contract is voidable by the purchaser until he or she has received the public offering statement. In addition, the contract is voidable by the purchaser for five (5) days after execution of the contract of sale. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within a reasonable time after receipt of the notice of cancellation as provided in subsection (c) of this section.

(b) Up to five (5) days after execution of the contract of sale, the developer may cancel the contract of purchase without penalty to either party. The developer shall return all payments made and the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If the materials are not returned, the developer may deduct the cost of them and return the balance to the purchaser.

(c) If either party elects to cancel a contract pursuant to subsections (a) or (b) of this section, he or she may do so by hand-delivering notice thereof to the other party or by mailing notice thereof by prepaid United States mail to the other party or to his or her agent for service of process, which notice shall be deemed given when deposited in the United States mail.

#### **18-14-410. Liens.**

(a) Prior to the transfer of a time-share interval, the developer shall record, or furnish to the purchaser, releases of all liens affecting that time-share interval or shall provide a surety bond or insurance against the lien from a company acceptable to the agency, as provided for liens on real estate in this state; or such underlying lien document shall contain a provision wherein the lienholder subordinates its rights to that of a time-share purchaser who fully complies with all of the provisions and terms of the contract of sale.

(b) Unless a time-share interval owner or his or her predecessor in title agrees otherwise with the lienor, if a lien other than a mortgage or deed of trust becomes effective against more than one (1) time-share interval in a time-share project, any time-share interval owner is entitled to a release of his or her time-share interval from the lien upon payment of the amount of the lien attributable to his or her time-share interval. The amount of the payment must be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering that time-share interval. After payment, the managing entity may not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien.

#### **18-14-411. Financial records -- Examination.**

(a) The person or entity responsible for making or collecting common expense assessments or maintenance assessments shall keep detailed financial records.

(b) All financial and other records shall be made reasonably available for examination by any time-share interval owner and his or her authorized agents.

## **SUBCHAPTER 5 - ADVERTISING**

### **SECTION**

- 18-14-501. Filing of advertising materials.
- 18-14-502. False advertising declared unlawful.
- 18-14-503. Prohibited advertising.
- 18-14-504. Unfair acts or practices.
- 18-14-505. Enforcement.

#### **18-14-501. Filing of advertising materials.**

(a) All advertising materials proposed for use in this state by any person in connection with the offer or sale of time-shares shall be filed with the agency within ten (10) days of their use.

(b) Each separate filing of advertising materials shall be accompanied by a filing fee of ten dollars (\$10.00).

(c) Advertising materials include, but are not limited to, the following:

- (1) Promotional brochures, pamphlets, advertisements, or other materials to be disseminated to the public in connection with the sale of time-shares;
- (2) Transcripts of all radio and television advertisements;
- (3) Offers of travel, accommodations, meals, or entertainment at no cost or reduced cost;
- (4) Direct mail solicitation;
- (5) Advertising, including testimonials or endorsements; and
- (6) Scripts or standardized narrative for use in making telephone solicitations.

#### **18-14-502. False advertising declared unlawful.**

(a) It shall be unlawful for any person with intent, directly or indirectly, to offer for sale or sell time-shares in this state to authorize, use, direct, or aid in the publication, distribution, or circulation of any advertisement, radio broadcast, or telecast concerning the time-share project in which the time-shares are offered which contains any statement, pictorial representation, or sketch which is false or misleading.

(b) Nothing in this section shall be construed to hold the publisher or employee of any newspaper, any job printer, any broadcaster or telecaster, or any magazine publisher, or any of the employees thereof, liable for any publication herein referred to unless the publisher, employee, or printer has actual knowledge of the falsity thereof or has an interest either as an owner or agent in the time-share project so advertised.

#### **18-14-503. Prohibited advertising.**

No advertising for the offer or sale of time-shares shall:

- (1) Contain any representation as to the availability of a resale program or rental program offered by, or on behalf of, the developer or its affiliate, unless the resale program or rental program has been made a part of the offering and submitted to the agency;

(2) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time, unless the numerical quantity or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain any statement concerning the investment merit or profit potential of the time-share, unless the agency has determined from evidence submitted on behalf of the developer that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the time-shares, nor shall a price increase of a time-share be announced more than sixty (60) days prior to the date that the increase will be placed into effect;

(5) Contain statements concerning the availability of time-shares at a particular minimum price if the number of time-shares available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of time-shares then for sale at the minimum price is set forth in the advertisement;

(6) Contain any statement that the time-share being offered for sale can be further divided, unless a full disclosure is included as to the legal requirements for further division of the time-share;

(7) Contain any asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of any previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the time-share project;

(9) Misrepresent the nature or extent of any services incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make any misleading or deceptive representation with respect to the contents of the time-share permit, the purchase contract, the purchaser's rights, privileges, benefits, or obligations under the purchase contract or this chapter;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program; or

(13) Describe any proposed or uncompleted private facilities over which the developer has no control, unless the estimated date of completion is set forth and evidence has been presented to the agency that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

#### **18-14-504. Unfair acts or practices.**

(a) It is unlawful for any person to offer, by mail, by telephone, or in person, a prize or gift, with the intent to offer a sales presentation for a time-share project, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer the sales presentation.

(b) The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any prize or gift promotional offer for a time-share project are prohibited:

(1) Failing clearly and conspicuously to disclose the rules, regulations, terms, and conditions of the promotional program, a description of the prizes offered, if any, and the date on or before which the prize or gift offer will terminate or expire;

(2) Failing to disclose the retail value of the gift or prize and the odds of winning. The person making the offer must maintain a sufficient inventory of the gift or prize so as to be able to equal the reasonable response to the offer;

(3) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose in connection with a mailing to a third person;

(4) Failing to award and distribute at least one (1) of each prize or gift of the value and type represented in the promotional program by the day and year specified in the promotion. When a promotion promises the award of a prescribed number of each prize, this number of prizes shall be awarded by the date and year specified in the promotion; or

(5) Misrepresenting in any manner the odds of receiving any prize or gifts or the rules, terms, or conditions of participation in the promotional program.

**18-14-505. Enforcement.**

Whenever the agency determines from evidence available to it that a person is violating or failing to comply with the requirements of this subchapter, the agency may order the person to desist and refrain from such violations and may take enforcement action under the provisions of § 18-14-201 et seq.

## **SUBCHAPTER 6 - FINANCING**

### **SECTION**

18-14-601. Financing of time-share programs.

18-14-602. Protection of purchasers from subsequent underlying lien.

**18-14-601. Financing of time-share programs.**

In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the lienholder of any underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance. Any transfer of the developer's interest in the time-share program to any third person shall be subject to the obligations of the developer.

**18-14-602. Protection of purchasers from subsequent underlying lien.**

The developer whose project is subjected to an underlying blanket lien or encumbrance subsequent to the transfer of a time-share interval shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder a nondisturbance clause, subordination agreement, or partial release of the lien as to those time-share intervals sold or shall provide a surety bond or insurance against the lien from a company acceptable to the agency.

## **SUBCHAPTER 7 - CAMPING SITES**

### **SECTION**

18-14-701. Definition. 44

18-14-702. Buyer's right to cancel. 44

18-14-703. Seller to provide notice of cancellation — Form 44

**18-14-701. Definition.**

As used in this subchapter, "time-share program" shall have the same meaning as provided in § 18-14-102.

**18-14-702. Buyer's right to cancel.**

(a) In addition to any other right to revoke an offer, the buyer has the absolute right to cancel a contract or offer for the purchase of a camping site under a time-share program until midnight of the fifth calendar day, excluding Sundays and holidays as declared in § 1-5-101, after the day on which the buyer signs an agreement.

(b) Cancellation occurs when the buyer returns to the seller the notice of cancellation, the notice having been provided for the buyer by the seller.

(c) To further protect the consumer, it is suggested that the notice of cancellation be sent by registered mail.

**18-14-703. Seller to provide notice of cancellation -- Form.**

(a) The seller of a camping site under a time-share program must furnish to the buyer at the time the buyer signs the sales contract or otherwise agrees to buy the campsite a complete form in duplicate captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable and which shall contain in 10-point bold-face type, the following information and statements:

Enter date of transaction\_\_\_\_\_

You are entitled to cancel the agreement or offer referred to above at any time prior to midnight of the fifth day, excluding Sundays and holidays, after the day you signed the agreement or offer. In the event you cancel, the seller must return to you (1) any payments made; (2) any goods or other property (or a sum equal to the amount of the trade-in allowance given therefore); and (3) any note or other evidence of indebtedness, given by you to the seller pursuant to or in connection with the agreement or offer.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO

(Name of seller) \_\_\_\_\_ AT NOT LATER THAN MIDNIGHT OF \_\_\_\_\_(Date)

I HEREBY CANCEL THIS TRANSACTION \_\_\_\_\_(Date)

\_\_\_\_\_ (Buyer's signature)".

(b) If seller fails to give both oral and written notice of the buyer's right to cancellation, the cooling-off period does not begin to run until actual notice is given.